

Conversely, claimant contends the preliminary hearing Order should be affirmed. Claimant argues his back problems are related to the December 6, 2000 accident as both his work activities and the altered gait that he has had following the accident have aggravated a preexisting back condition. Claimant argues the medical opinions provided by both Dr. Paul Stein and Dr. Frederick Smith support his contentions.

The only issue before the Board on this appeal is whether claimant's present problems with his left knee, left hip and low back are directly related to the December 6, 2000 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed.

On December 6, 2000, claimant slipped and fell at work, injuring his right knee. Claimant sought medical treatment for that injury and eventually underwent right knee surgery on February 13, 2001.

Following the accident, respondent moved claimant from his maintenance job to that of a machine operator, a job that required claimant to do a lot of bending at the waist. In January 2001, claimant began experiencing discomfort in his low back and a burning sensation down into his left leg.

Claimant was in a knee brace following right knee surgery and limped. In late April 2001, after returning to work for respondent as a machine operator and while undergoing therapy, claimant's low back and left leg symptoms worsened. Claimant testified, in part:

Q. (Mr. Slape) Did you have any problems with your low back or hip?

A. (Claimant) A lot.

Q. Or burning into your leg?

A. A lot. It was really getting to the point that it was really getting bad and with the therapy I was doing I was complaining to the therapist that the left leg was burning because they had me standing on it constantly to do my therapy on my right knee. And it was just -- I told the therapist all the time that it was hurting.

Q. Was your work causing you to aggravate the condition?

A. There was no doubt.

Q. In what way?

A. The constant bending over from the waist. I couldn't kneel or stoop or crouch on my knee so everything was straight from the waist over because they had put restrictions on me, Dr. Jansson had, at the end, to occasional kneeling or squatting.

Well, my job was repetitive, part after part. I had to run 80 to 100 parts on a six-minute cycle and I had to put them up, climb up two steps of stairs, put them in the machine holding the weight. There is no way to brace up. Everything was going into the machine.

Q. Constant bending?

A. Constant.

Q. And did that aggravate your low back condition?

A. Immensely. There were days I missed work or I had to go home early because I just couldn't do it.¹

Before the December 2000 slip and fall, claimant had a history of low back problems. Claimant testified that in 1996 he injured his back unloading steel from a truck and was diagnosed as having bulging disks at L4-5 and L5-S1 for which he underwent two back surgeries. Despite those earlier back problems, claimant passed the physical examination required by respondent before commencing work with respondent in February 2000.

The Board affirms Judge Barnes' implied finding that claimant's present left knee, left hip and low back problems are directly related to his work for respondent. That conclusion is supported by both claimant's testimony and the medical notes of one of claimant's treating doctors, Dr. Frederick R. Smith of Wesley Medical Center's Occupational Health Services. Dr. Smith notes in his records that claimant initially sustained trauma to the right knee and later developed symptoms in his left knee, left hip and low back because of favoring the right leg. In notes dated July 11, 2001, the doctor described claimant's injuries as follows:

Fall with trauma to right knee. Subsequent left knee, left hip and low back pain due to ambulating for approximately two months on hard concrete favoring his right lower extremity.

¹ October 18, 2001 preliminary hearing transcript, at 15, 16.

In those same notes, Dr. Smith also commented that claimant reported he had been doing more bending at the waist due to restrictions placed upon him by Dr. Jansson against bending the right knee.

Claimant also told Dr. Paul S. Stein that he was bending a lot at the waist while working as a machine operator because he could not bend his knee. In his October 3, 2001 report, Dr. Stein writes, in part:

. . . Mr. Hulme was out of work for eight weeks after the surgery and then was released by Dr. Jantzen [sic] with permanent restrictions on the knee. He still had some pain in the knee. He was to bend or squat only occasionally. However, the patient says that because of pain in the knee he really couldn't squat or kneel. He was working as a machine operator at that time which required a lot of bending at the waist because he could not bend at the knee very much. He was picking up objects that weighed anywhere from 10 up to 75 lbs. In January he started having lower back pain with severe burning and then pain radiating into the left lower extremity of a burning nature. . . .

Finally, Dr. Philip R. Mills, who initially examined claimant at the request of Judge Barnes, authored a September 4, 2001 report at the request of the respondent and its insurance carrier's attorney in which the doctor stated that claimant's back problems appeared to be a "natural probable course of his preexisting problem" and that he was unable to relate claimant's left hip bursitis and left knee pain to his fall. Despite Dr. Mills' opinions, at this stage of the proceeding, the Board concludes that claimant has established a direct causal relationship between his left knee, left hip and low back complaints and an accidental injury at work.

WHEREFORE, the Board affirms the November 13, 2001 preliminary hearing Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of January 2002.

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director